

EXHIBIT 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LANDSCAPE CONSULTANTS OF
TEXAS, INC., and METROPOLITAN
LANDSCAPE MANAGEMENT, INC.,

Plaintiffs,

v.

CITY OF HOUSTON, TEXAS, and
MIDTOWN MANAGEMENT DISTRICT,

Defendants.

Civil Action No. 4:23-cv-03516

**DEFENDANT MIDTOWN MANAGEMENT DISTRICT'S ANSWERS AND OBJECTIONS TO
PLAINTIFF'S FIRST SET OF DISCOVERY**

TO: Plaintiff, Landscape Consultants of Texas, Inc. by and through their attorney of record, Erin E. Wilcox, Pacific Legal Foundation, 555 Capitol Mall Suite 1290, Sacramento, CA 95814.

COMES NOW Midtown Management District, Defendant in the above-entitled and numbered cause, and pursuant to the provisions of the Federal Rules of Civil Procedure, files these Responses to Plaintiff's First Set of Interrogatories, Request for Admission, and Request for Production.

Respectfully submitted,

HARRIS HILBURN, PLLC

/s/ Britton B. Harris

Britton B. Harris

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CERTIFICATE OF SERVICE

I certify by my signature below that the above Discovery have been served upon counsel for Plaintiff via electronic service, under Federal Rules of Civil Procedure on this 5th day of April 2024.

/s/Brett J. Sileo
Brett J. Sileo

ANSWERS TO INTERROGATORIES

1. Identify all persons who contributed or consulted in the preparation of answers to these Interrogatories and indicate the interrogatory or interrogatories for which they were consulted.

ANSWER:

Kandi Schramm, Administrative Manager
Matt Thibodeaux, Executive Director
Marlon Marshall, Sr. Director of Engineering and Strategic Development
Midtown Management District
410 Pierce Street, Suite 355
Houston, Texas 77002
713-526-7577

With the assistance of counsel
Brett Sileo
Harris Hilburn PLLC
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Houston, Texas 77004

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Bracewell LLP
711 Louisiana Street, Suite 2300
Houston, Texas 77002
713-221-1202

2. Identify all documents referred to or examine in the preparation of the answers to these interrogatories and indicate the interrogatory(s) for which each document was referred or examined.

ANSWER: The District referred to Texas Local Government Code §375.222 in answering Interrogatory 4, 7, 8, and 9, a copy of which is being produced with these responses.

3. Identify all District contracts that normally would have been awarded to the lowest responsive and responsible bidder but were instead awarded to a business other than the lowest responsive and responsible bidder, from January 1, 2019, to present.

ANSWER: The District contends that it awarded all of its contracts to the lowest responsive and responsible bidder.

4. Identify each compelling interest you contend is advanced by the MWDBE Program and/or 10-point bonus.

ANSWER:

The District followed the directive established by the Texas State Legislature when the Legislature enacted Texas Local Government Code §375.222 by enacting a program to stimulate the growth of disadvantaged businesses and afford those disadvantaged businesses a full and fair opportunity to compete for district contracts, further remedial goals and eradicate the effects of prior discrimination in the public procurement process. The Texas Legislature found that there was a history of discrimination in the award of public contracts that necessitated the enactment of this statute.

5. Identify all District contractors or other business enterprises sanctioned or penalized by the District for discriminating against subcontractors on the basis of race, ethnicity, or sex from January 1, 2019, to present.

ANSWER: None.

6. Identify all District employees or officials who have been investigated or sanctioned for discriminating in procurement or the award of District contracts on the basis of the contractor's race, ethnicity, or sex from January 1, 2019, to present.

ANSWER: None.

7. Identify each specific, past violation of the U.S. Constitution or statute that the MWDBE Program and/or 10-point bonus is intended to remedy.

ANSWER:

The District followed the directive established by the Texas State Legislature when the Legislature enacted Texas Local Government Code §375.222 by following a program to stimulate the growth of disadvantaged businesses and afford those disadvantaged businesses a full and fair opportunity to compete for district contracts, further remedial goals and eradicate the effects of prior discrimination. The Texas Legislature found that there was a history of discrimination in the award of public contracts that necessitated the enactment of this statute.

8. Identify each way the MWDBE program and/or 10-point bonus is narrowly tailored to remedy each violation identified in Interrogatory No. 8.

ANSWER:

The District did not identify a specific violation of the U.S. Constitution or statute in response to Interrogatory 8, as the District is following the directive of Texas Local Government Code §375.222 enacted after the Legislature determined that there was a history of discrimination against minority and woman-owned businesses. The District also follows requirements from the City of Houston to have a program to help remedy the effects of prior discrimination on minority and woman owned businesses. The District's MWBDE program was created in a fashion to remedy the prior discrimination that existed through discussions by staff and/or committees that determined that awarding 10 points to qualified and certified minority and woman owned businesses would be the most effective way to address the history of discrimination in public contracting while ensuring that highly qualified contractors who would provide the District with quality goods and services would be selected as winning bidders for District contracts while not overly disadvantaging any bidder. The District determined that awarding 10 points to qualified minority and women-owned businesses was the best good faith effort that the District could comply with the requirements of Texas Local Government Code §375.222 and the requirements of the City of Houston. The District also notes that it does not consider the award of 10 points to minority and women-owned businesses to bidders on District contractors to be a "bonus," as the ten points is included in the total evaluation of bidders. Qualified and certified minority and women-owned businesses are awarded 10 points out of the total 100 points for each bidder's score, not an add on "bonus" applied after evaluation of the bids.

9. Identify the statistical basis for the 10-point bonus.

Answer:

The District follows the directive of Texas Local Government Code §375.222 enacted after the Legislature determined that there was a history of discrimination against minority and women-owned businesses. The District also follows requirements from the City of Houston to have a program to help remedy the effects of prior discrimination on minority and women-owned businesses. The District's MWBDE program was created in a fashion to remedy the prior discrimination that existed through discussions by staff and/or committees that determined that awarding 10 points to qualified and certified minority and woman-owned businesses would be the most effective way to address the history of discrimination in public contracting while ensuring that highly qualified contractors who would provide the District with quality goods and services would be selected as winning bidders for District contracts while not overly disadvantaging any bidder. The District also notes that it does not consider the award of 10 points to minority and women-owned businesses to bidders on District contractors to be a "bonus," as the ten points is included in the total evaluation of bidders. Qualified and certified minority and women-owned businesses are awarded 10 points out of the total 100 points for each bidder's score, not an add on "bonus" applied after evaluation of the bids.